

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CAVOUR NDAM,

Plaintiff

v.

Civil Action No. 1:21-cv-01258

DEUTSCHE LUFTHANSA
AKTIENGESELLSCHAFT, *et al.*,

Defendants.

**DECLARATION OF JONATHAN M. STERN IN SUPPORT OF
MOTION TO DISMISS THE COMPLAINT
FOR FRAUD ON THE COURT**

I, Jonathan M. Stern, pursuant to 28 U.S.C. § 1746(2), declare the following:

1. I am an attorney admitted to practice and in good standing in the District of Columbia, Maryland, Mississippi, Pennsylvania, and Virginia and various federal courts, including but not limited to this Court, the United States Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States.

2. I am counsel of record for Deutsche Lufthansa Aktiengesellschaft (“Lufthansa”) in this case.

3. There have been two depositions taken in this civil action, the Deposition of Cavour Ndam, the Plaintiff, which I took on July 5, 2022 (hereinafter the “Ndam Depo.”) and the Deposition of Angela I. Salcedo, the longtime girlfriend of the Plaintiff, which I took on July 7, 2022 (hereinafter the “Salcedo Depo.”).

4. A true copy of the transcript of the Ndam Depo. is attached hereto as Exhibit A.

5. A true copy of the transcript of the Salcedo Depo. is attached hereto as Exhibit B.

6. A true copy of Plaintiff's Rule 26(a)(1) Disclosures in this case, which were served on April 13, 2022 and marked as Exhibit 7 at Plaintiff's deposition, are attached as Exhibit C.

7. A true copy of Plaintiff's Rules 26(a)(2) Disclosures in this case, which were served on May 2, 2022, are attached as Exhibit D.

8. A true copy of Plaintiff's Expert Report of John A. Bruno, Jr., M.D. in this case, which was served on May 2, 2022, is attached as Exhibit E.

9. Lufthansa issued interrogatories and requests for production of documents to Plaintiff on February 24, 2022, the day after the Court issued the initial Order in the case. A true copy of Plaintiff's Responses to Interrogatories in this case, which were served on May 24, 2022 and marked as Exhibit 6 at Plaintiff's deposition, are attached as Exhibit F.

10. A true copy of Plaintiff's Responses to Requests for Production in this case, which were served on April 6, 2022 and marked as Exhibit 10 at Plaintiff's deposition, are attached as Exhibit G.

11. Plaintiff produced 626 pages of documents and two digital files containing MRIs on a CD in April; the documents were labeled Ndam_1 through Ndam_626 and the two digital files were labeled Ndam_627 and Ndam_628. A true copy of the 626 pages, which were marked as Exhibit 1 at Plaintiff's deposition (Ndam Depo. at 4), is being filed under seal as

Exhibit H. Those documents are relevant to the motion to dismiss only for what they do not include, any mention of Plaintiff's prior knee injury or the motor vehicle accident that produced it. Rather than publicly-file in bulk Plaintiff's medical records that are not relevant to this motion for their content, I am filing them under seal with a corresponding motion.

12. On May 26, 2022, I exchanged emails with Plaintiff's counsel, who confirmed to me that, despite objections contained in Plaintiff's discovery responses, no information other than privileged communications or attorney work product was withheld. The confirming email from Plaintiff's counsel to me on May 26, 2022 is attached as Exhibit I.

13. During the course of my investigation in this case, I learned of a lawsuit that Plaintiff had filed against State Farm Mutual Automobile Insurance Company in the District of Columbia Superior Court, which was assigned Case No. 2021 CA 003624 B (hereinafter, the "State Farm Lawsuit").

14. I obtained copies of Plaintiff's deposition, which was taken in two sessions, in the State Farm Lawsuit. The first session was on May 3, 2022 and the second session was on June 9, 2022. True copies of the transcripts are attached respectively as Exhibit J (hereinafter "Ndam v. State Farm Depo. Vol. I") and Exhibit K (hereinafter "Ndam v. State Farm Depo. Vol. II").

15. On June 30, 2022, five days (but only one business day) before Plaintiff's deposition, I learned that Plaintiff had injured his left knee in a motor vehicle accident in New York City in October of 2018, a fact he had not disclosed in written discovery.

16. On July 7, 2022, I learned from Plaintiff's long-time girlfriend (in her deposition) that Plaintiff had retained the Karp Frosh Firm to represent him with respect to the October 2018 New York City motor vehicle accident.

17. That afternoon, I issued subpoenas to the Karp law firm, to Plaintiff's Medicaid insurer, and to Reston Limousine. True copies of the Subpoenas are attached collectively as Exhibit L.

18. Thus far, the Karp Firm has produced documents, Plaintiff's Medicaid insurer has advised that they have no records, and there has been no communication from Reston Limousine.

19. The production from the Karp Firm was electronic and consisted of seven PDF files labeled ndam.1 through ndam.7. The seven PDF files contained 350 pages. There was no labeling of the pages, so I labeled them Karp001 through Karp350.

20. I have produced all of the Karp Firm-produced documents to Plaintiff's counsel. Those that the memorandum of points and authorities in support of the motion to dismiss reference are attached as Exhibit M.

21. One week after Plaintiff's deposition, Plaintiff made a supplemental production of 76 pages (Labeled Ndam_627 through Ndam_702) of previously unproduced documents and purportedly of three radiographic images. The "paper" documents were attached as a PDF to the email. The email explains: "The same has been mailed to your office on a CD along with 3 radiology films, labeled Ndam_703, Ndam_704, and Ndam_705." A true copy of the email is attached as Exhibit N. The hard copy and CD have not yet been received at my

office. It appears that the PDF was run through an optical character recognition process that has rendered numerous of the pages illegible.

22. Ndam_627 and Ndam_628 were used twice, first for the two radiological images in Plaintiff's original production and then for the first two pages of the post-deposition supplemental production.

23. Those pages of the 76 pages of supplemental paper production that the memorandum of points and authorities in support of the motion to dismiss reference are attached as Exhibit O.

24. I have redacted all Exhibits other than Exhibit O in accordance with the Court's electronic filing procedures to remove social security numbers, minor's names (other than initials), and month and day of births.

Executed at Rockville, Maryland on July 20, 2022

By: Jonathan M. Stern

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INDEX OF EXHIBITS

Exhibit

- A Deposition of Cavour Ndam (July 5, 2022) (“Ndam Depo.”)
- B Deposition of Angela I. Salcedo (July 7, 2022) (“Salcedo Depo.”)
- C Plaintiff’s Rule 26(a)(1) Disclosures
- D Plaintiff’s Rules 26(a)(2) Disclosures
- E Plaintiff’s Expert Report of John A. Bruno, Jr., M.D.
- F Plaintiff’s Responses to Interrogatories
- G Plaintiff’s Responses to Requests for Production
- H Plaintiff’s document production (626 pages, Exhibit 1 to Plaintiff’s deposition)
- I Email from Plaintiff’s counsel to Jonathan M. Stern on May 26, 2022
- J Volume I of Plaintiff’s Deposition in Ndam v. State Farm (“Ndam v. State Farm Depo. Vol. I”)
- K Volume II of Plaintiff’s Deposition in Ndam v. State Farm (“Ndam v. State Farm Depo. Vol. II”)
- L Three Subpoenas
- M Selected pages of Karp Firm-produced documents (“KarpXXX”)
- N July 12, 2022 Email covering Supplemental Production
- O Selected pages from Supplemental Production (“Ndam_XXX”)

CERTIFICATE OF SERVICE

I hereby certify that I filed this Declaration of Jonathan M. Stern using the Court's ECF system on July 20, 2022, and that—according to the ECF system—this will effect service on:

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